In the Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73-1730

ROBERT M. ROSE AND DORIS D. ROSE, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

This case represents petitioners' second attempt[1] to challenge the disallowance of claimed medical expense deductions under Section 213 of the Internal Revenue Code of 1954 for the costs of food, lodging and other personal expenses of their daughter and of her mother petitioner Doris Rose who accompanied her, incurred in seeking a more healthful climate.

The substance of petitioners' claim (Pet. 16-18) is that the inherently personal expenses of food and lodging incurred in maintaining their daughter in Arizona and Florida were deductible medical expenses because her doctor recommended such a change in climate for her

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[1] The Commissioner's disallowance of such claimed deductions for 1964 was upheld in *Rose* v. *Commissioner*, 52 T.C. 521, affirmed *per curiam*, 435 F.2d 149 (C.A. 5), certiorari denied, 402 U.S. 907. The present case involves the years 1966 and 1967.

serious bronchial condition. This Court, however, in *Commissioner* v. *Bilder*, 369 U.S. 499, rejected an identical claim for medical deductions. In that case, the Court upheld Treasury Regulations on Income Tax (1954 Code) (26 C.F.R.), Sec. 1.213-1(e)(iv), which provides in terms specifically appropriate to petitioners' claim, as follows—

> However, an amount allowable as a deduction for "transportation primarily for and essential to medical care" shall not include the cost of any meals and lodging while away from home receiving medical treatment. For example, if a doctor prescribes that a taxpayer go to a warm climate in order to alleviate a specific chronic ailment, the cost of meals and lodging while there would not be deductible. * * *

Petitioners also challenge (Pet. 12-15) the correctness of the decisions below on the ground that the Tax Court's findings of fact are fraudulent and fabricated. They do not, however, specifically refer to any particular finding nor do they refer to any part of the record which contradicts the Tax Court's findings. In any event, the findings of fact are actually favorable to petitioners, for there is no dispute that their daughter was "intensely ill and that she was greatly benefitted by leaving her home in New Orleans for Arizona and Florida" (Pet. App. C, p. 2). These facts, as the Court held in *Bilder*, do not change inherently personal costs for food and lodging into deductible medical expenses.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JULY 1974.

DOJ-1974-07